# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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| In re the Application of: | Atty. Docket No.: 004770.00261 |
| Martin Zilliacus | |
| Serial No.: 10/777,284 | Group Art Unit: 2452 |
| Filed: November 5, 2004 | Examiner: DOAN, DUYEN MY |
| For: Apparatus and Associated Method for Downloading an Application With a Variable Lifetime to a Mobile Terminal | Confirmation No.: 5467 |

## APPEAL BRIEF

U.S. Patent and Trademark Office
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Sir:

This is an appeal brief filed in support of Appellant's Notice of Appeal, filed April 30, 2010. Appeal is taken from the office action mailed December 30, 2009.

In accordance with MPEP 1207.04 (previous appeal fees can be applied to second appeal if prosecution is reopened after first appeal), in view of the prior fees paid by Appellant, no further fee is believed to be due in connection with this appeal brief. However, if the PTO determines that any fee is due, please charge any fees to our Deposit Account No. 19-0733. In addition, any extensions of time necessary for acceptance or entry of this paper are hereby requested.

## REAL PARTY IN INTEREST
37 C.F.R. § 41.37(c)(1)(i)

The owner of this application, and the real party in interest, is Nokia Corporation of Espoo, Finland.

**RELATED APPEALS AND INTERFERENCES**
37 C.F.R. § 41.37(c)(1)(ii)

There are no related appeals or interferences.

**STATUS OF CLAIMS**
37 C.F.R. § 41.37(c)(1)(iii)

Claims 1-22 and 50-52 have been canceled.  Claims 23-49 and 53-103 are pending and stand rejected.  Appellant hereby appeals the rejection of claims 23-49 and 53-103.

**STATUS OF AMENDMENTS**
37 C.F.R. § 41.37(c)(1)(iv)

None.

**SUMMARY OF CLAIMED SUBJECT MATTER**
37 C.F.R. § 41.37(c)(1)(v)

In making reference herein to various embodiments in the specification text and/or drawings to explain the claimed invention, Appellant does not intend to limit the claims to those embodiments or examples; all references to the specification and drawings are illustrative unless otherwise explicitly stated.

### Independent Claim 23

Independent claim 1 recites a method [FIG. 1; FIG. 2; page 5 lines 19-26] comprising:

connecting a first mobile terminal [FIG. 1 element 110] to an application database [FIG. 1 element 120] through a  cellular communication network [FIG. 1 element 124], the application database containing at least one application having a variable selectable lifetime [FIG. 1 element 126; page 8 lines 7-16; page 9 lines 12-24];

receiving a user-specified choice of the at least one application for downloading to the first mobile terminal [FIG. 3 step 312; FIG. 4 step 414; page 10 lines 21-23];

providing the application database with information identifying a user of the first mobile terminal [FIG. 4 step 424; page 12 lines 9-16];

receiving a user-specified selection of a variable lifetime for the chosen application, during which lifetime the chosen application is executable [FIG. 3 step 314; FIG. 4 step 418; page 10 lines 24-28];

downloading the chosen application from said application database to the first mobile terminal [FIG. 3 step 318; FIG. 4 step 426; page 11 lines 6-9] ; and

storing indicia of the selected lifetime for the chosen application and of the information identifying the user, wherein the stored indicia corresponds to the selected lifetime during which the chosen application is further executable at mobile terminals accessible by the user [FIG. 4 step 424; page 6 lines 14-19 and 32-33; page 12 lines 9-29].

## Dependent Claim 27

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 27, which is argued separately below.

Dependent claim 27 recites the method of claim 26, wherein the short-range connection is an infrared connection [page 12 lines 7-8; page 14 lines 15-17].

## Dependent Claim 30

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v)

– in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 30, which is argued separately below.

Dependent claim 30 recites the method of claim 23, further comprising the steps of:

receiving in the application database a request from the user for a subsequent downloading of a previously-downloaded application [page 6 lines 17-21; page 7 lines 4-9; page 12 line 18 to page 13 line 21];

determining whether lifetime remains by reference to the stored indicia of the selected lifetime for a previously-downloaded application for the user [page 6 lines 17-21; page 7 lines 4-9; page 12 line 18 to page 13 line 21]; and

downloading the application a subsequent time, if it is determined that at least a portion of the selected lifetime remains for the requested application [page 6 lines 17-21; page 7 lines 4-9; page 12 line 18 to page 13 line 21].

## Dependent Claim 31

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 31, which is argued separately below.

Dependent claim 31 recites the method of claim 30, wherein the request is received from a second mobile terminal [page 9 lines 6-9; page 12 line 33 to page 13 line 3].

### Dependent Claim 32

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 32, which is argued separately below.

Dependent claim 32 recites the method of claim 30, wherein the subsequent downloading comprises downloading the application to a second mobile terminal [page 9 lines 6-9; page 12 line 33 to page 13 line 3].

### Dependent Claim 37

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 37, which is argued separately below.

Dependent claim 37 recites the method of claim 36, wherein the short-range connection is an infrared connection [page 12 lines 7-8; page 14 lines 15-17].

### Independent Claim 41

Independent claim 41 recites an apparatus comprising:

a network infrastructure [FIG. 1 element 124] configured to communicate with at least one mobile terminal [FIG. 1 element 110; page 8 lines 7-16; page 9 lines 12-24];

an application database [FIG. 1 element 120] containing at least one downloadable application, the application having a user-selectable variable lifetime during which the application is permitted to remain executable by an identified user [page 8 lines 7-16; page 9 lines 12-24];

a downloading server [FIG. 1 element 118] configured to communicate through the network infrastructure [FIG. 1 element 124] and configured to detect a request containing information identifying a user to download a chosen application of the at least one application contained in the application database, the downloading server being further configured to obtain the application from the application database, and to download the application to the at least one mobile terminal [FIG. 1 element 110; page 6 lines 12-21]; and

an application-license database [FIG. 1 element 122] coupled to the downloading server, the application-license database configured to store the selected variable lifetime and the user-identifying information [FIG. 2 elements 234, 23; page 6 lines 12-21];

wherein the downloading server is configured to compare the download request to the selected lifetime and the user-identifying information stored in the application-license database for the chosen application, wherein the downloading server is further configured to download said application if the user has application lifetime remaining for the requested application [page 6 lines 12-21; page 13 lines 4-21].

## Dependent Claim 42

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with

this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 42, which is argued separately below.

Dependent claim 42 recites the apparatus of claim 41 wherein said downloadable application is preprogrammed with the selected lifetime, wherein the downloadable application is configured to delete itself from the at least one mobile terminal when the selected lifetime expires [FIG. 3 step 322; [page 6 lines 5-11].

## Independent Claim 45

Independent claim 45 recites an apparatus comprising:

a central processing unit (CPU) [FIG. 1 element 214; page 8 lines 22-30];

a memory unit coupled with the CPU and configured to store at least one application [FIG. 1 element 112; page 8 lines 22-30];

an application requestor coupled with the CPU and configured to generate requests to download a variable-lifetime application from an application database [page 10 lines 21-30];

a lifetime selector coupled with the CPU and configured to select a variable lifetime applicable to a downloaded application [page 10 lines 21-30];

a lifetime determiner coupled with the CPU and configured to determine a remaining portion of the lifetime associated with a downloaded application [page 10 lines 21-30]; and

an application disabler coupled with the CPU and configured to disable an application [page 10 lines 21-30; page 14 line 29 to page 15 line 3];

wherein the apparatus is operable to receive and store downloaded applications and to permit the downloaded application to be executed at the mobile terminal as long as a portion of its associated lifetime remains [page 10 lines 21-30; page 14 line 29 to page 15 line 3].

## Dependent Claim 47

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 47, which is argued separately below.

Dependent claim 47 recites the apparatus of claim 45, wherein the application disabler is configured to delete an application with lifetime remaining in order to free storage space in the memory unit [page 5 lines 19-26].

## Independent Claim 53

Independent claim 53 recites a method comprising:

receiving a selected choice of a first application from a mobile terminal [FIG. 1 element 110], the first application being one of a plurality of applications [FIG. 1 element 126; FIG. 3 step 312; FIG. 4 step 414; page 6 lines 22-34]; and

receiving the first application via a wireless network [FIG. 1 element 116], the first application being configured to become unavailable for use on the mobile terminal upon either

expiration of a  time period selectable by a user of the mobile terminal [page 6 lines 7-34; page 10 lines 21-33] , or

use of the first application a  number of times selectable by a user of the mobile terminal [page 6 lines 7-34; page 10 lines 21-33].

## Dependent Claim 56

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 56, which is argued separately below.

Dependent claim 56 recites the method of claim 55, wherein the short-range wireless communication comprises an infrared connection [page 12 lines 7-8; page 14 lines 15-17].

## Dependent Claim 59

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 59, which is argued separately below.

Dependent claim 59 recites the method of claim 53, wherein the first application is configured to become unavailable by becoming non-functional [page 10 lines 27-29].

## Dependent Claim 60

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 60, which is argued separately below.

Dependent claim 60 recites the method of claim 53, wherein the first application is configured to become unavailable by automatically deleting at least a portion of itself [page 6 lines 8-11; page 11 lines 16-24].

## Dependent Claim 61

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 61, which is argued separately below.

Dependent claim 61 recites the method of claim 60, wherein the first application is configured to delete only executable code [page 11 lines 16-24].

## Dependent Claim 62

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 62, which is argued separately below.

Dependent claim 62 recites the method of claim 60, wherein the first application is configured to retain customized settings in the mobile terminal [page 11 lines 16-24].

## Dependent Claim 63

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v)

– in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 63, which is argued separately below.

Dependent claim 63 recites the method of claim 53, further comprising:

subsequently receiving a re-selected choice of the first application [page 5 lines 3-11; page 7 lines 5-8; page 13 lines 4-10]; and

again receiving the first application if time remains in the predetermined time period [page 5 lines 3-11; page 7 lines 5-8; page 13 lines 4-10].

## Dependent Claim 64

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 64, which is argued separately below.

Dependent claim 64 recites the method of claim 53, further comprising:

subsequently receiving a re-selected choice of the first application [page 5 lines 3-11; page 7 lines 5-8; page 13 lines 4-10]; and

again receiving the first application if the first application has been used less than the predetermined number of times [page 5 lines 3-11; page 7 lines 5-8; page 13 lines 4-34].

## Dependent Claim 66

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v)

– in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 66, which is argued separately below.

Dependent claim 66 recites the method of claim 53, further comprising:

making an initial payment for the first application [FIG. 3 step 316; page 11 lines 4-15];

subsequently receiving another selection of the first application [page 6 lines 12-21];

again receiving the first application if there is time remaining in the user-selected time period [page 6 lines 12-21; Abstract]; and

making additional payment for said again receiving the first application, wherein the amount of said additional payment is reduced from the amount of the initial payment [page 6 lines 12-21; Abstract].

## Dependent Claim 67

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 67, which is argued separately below.

Dependent claim 67 recites the method of claim 53, further comprising:

making an initial payment for the first application [FIG. 3 step 316; page 11 lines 4-15];

subsequently receiving another selection of the first application [page 6 lines 12-21];

again receiving the first application if the first application has been used less than the user-selected number of times [page 6 lines 12-21; Abstract]; and

making additional payment for said again receiving the first application, wherein

the amount of said additional payment is reduced from the amount of the initial payment [page 6

lines 12-21; Abstract].

## Independent Claim 74

Independent claim 74 recites a method comprising steps of:

receiving a choice of a first ringing tone at a mobile terminal, the first ringing tone being

one of a plurality of ringing tones [page 4 lines 25-27; FIG. 1 element 110; FIG. 1 element 126;

FIG. 3 step 312; FIG. 4 step 414; page 6 lines 22-34]; and

receiving the first ringing tone via a wireless network [FIG. 1 element 116], the first

ringing tone being configured to become unavailable for use on the mobile terminal upon either

expiration of a user-selectable time period [page 6 lines 7-34; page 10 lines 21-

33], or

use of the first ringing tone a user-selectable number of times [page 6 lines 7-34;

page 10 lines 21-33].

## Dependent Claim 77

While the PTO regulations do not require a summary of claimed subject matter for

dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v)

– in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with

this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a

summary of dependent claim 77, which is argued separately below.

Dependent claim 77 recites the method of claim 76, wherein the short-range wireless

communication comprises an infrared connection [page 12 lines 7-8; page 14 lines 15-17].

## Dependent Claim 80

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 80, which is argued separately below.

Dependent claim 80 recites the method of claim 74, further comprising:

subsequently receiving a re-selection of the first ringing tone [page 4 lines 25-29; page 5 lines 3-11; page 7 lines 5-8; page 13 lines 4-10]; and

again receiving the first ringing tone if there is time remaining in the user-selected time period [page 5 lines 3-11; page 7 lines 5-8; page 13 lines 4-10].

## Dependent Claim 81

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 81, which is argued separately below.

Dependent claim 81 recites the method of claim 74, further comprising:

subsequently receiving a re-selection of the first ringing tone [page 4 lines 25-29; page 5 lines 3-11; page 7 lines 5-8; page 13 lines 4-10]; and

again receiving the first ringing tone if the first ringing tone has been used less than the user-selected number of times [page 5 lines 3-11; page 7 lines 5-8; page 13 lines 4-10].

## Dependent Claim 83

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 83, which is argued separately below.

Dependent claim 83 recites the method of claim 74, further comprising:

making an initial payment for the first ringing tone [FIG. 3 step 316; page 11 lines 4-15];

subsequently receiving a re-selection of the first ringing tone [page 6 lines 12-21];

again receiving the first ringing if there is time remaining in the user-selected time period [page 6 lines 12-21; Abstract]; and

making additional payment for said again receiving the first ringing tone, wherein the amount of said additional payment is reduced from the amount of the first payment [page 6 lines 12-21; Abstract].

## Dependent Claim 84

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 84, which is argued separately below.

Dependent claim 84 recites the method of claim 74, further comprising:

making an initial payment for the first ringing tone [FIG. 3 step 316; page 11 lines 4-15];

subsequently receiving a re-selection of the first ringing tone;

again receiving the first ringing tone if the first ringing tone has been used less than the user-selected number of times [page 6 lines 12-21; Abstract]; and

making additional payment for said again receiving the first ringing tone, wherein the amount of said additional payment is reduced from the amount of the first payment [page 6 lines 12-21; Abstract].

## Independent Claim 86

Independent claim 86 recites apparatus comprising:

a memory [FIG. 1 element 112; page 8 lines 22-30]; and

a central processing unit (CPU) [FIG. 2 element 214; page 8 lines 22-30], wherein the apparatus is configured to perform

transmitting over a wireless communication network [FIG. 1 element 116] a choice of a first application, the first application being one of a plurality of applications [FIG. 3 step 312; page 10 lines 21-23],

receiving the first application via the wireless network, the first application being configured to become unavailable for use on the apparatus upon either

expiration of a user-selectable time period [page 6 lines 7-34; page 10 lines 21-33], or

use of the first application a user-selectable number of times [page 6 lines 7-34; page 10 lines 21-33], and

storing the first application in the memory [page 6 lines 1-11].

## Dependent Claim 89

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 89, which is argued separately below.

Dependent claim 89 recites the apparatus of claim 88, wherein the short-range wireless communication comprises an infrared connection [page 12 lines 7-8; page 14 lines 15-17].

## Dependent Claim 92

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 92, which is argued separately below.

Dependent claim 92 recites the apparatus of claim 86, wherein the first application is configured to become unavailable by becoming non-functional [page 10 lines 27-29].

## Dependent Claim 93

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 93, which is argued separately below.

Dependent claim 93 recites the apparatus of claim 86, wherein the first application is configured to become unavailable by automatically deleting at least a portion of itself [page 6 lines 8-11; page 11 lines 16-24].

## Dependent Claim 94

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 94, which is argued separately below.

Dependent claim 94 recites the apparatus of claim 93, wherein the first application is configured to delete only executable code [page 11 lines 16-24].

## Dependent Claim 95

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 95, which is argued separately below.

Dependent claim 95 recites the apparatus of claim 93, wherein the first application is configured to retain customized settings in the apparatus [page 11 lines 16-24].

## Dependent Claim 96

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v)

– in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 96, which is argued separately below.

Dependent claim 96 recites the apparatus of claim 86, wherein the apparatus is further configured to

transmit a subsequent re-choice of the first application [page 5 lines 3-11; page 7 lines 5-8; page 13 lines 4-10], and

again receive the first application if time remains in the user-selected time period [page 5 lines 3-11; page 7 lines 5-8; page 13 lines 4-10].

## Dependent Claim 97

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 97, which is argued separately below.

Dependent claim 97 recites the apparatus of claim 86, wherein the apparatus is further configured to

transmit a subsequent re-choice of the first application [page 5 lines 3-11; page 7 lines 5-8; page 13 lines 4-10]; and

again receive the first application if the first application has been used less than the user-selected number of times [page 5 lines 3-11; page 7 lines 5-8; page 13 lines 4-10].

## GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL
37 C.F.R. § 41.37(c)(1)(vi)

Claims 23-41, 43-44, 53-58, 63-67, 69-70, 72-92, 96-97, and 101-103 stand rejected under 35 U.S.C. § 103 as being unpatentable over Lin et al. (U.S. Patent 6,366,791) in view of Griswold (U.S. Patent 5,940,504).

Claims 42, 45-46, 48-49, 59-62, 68, 71, 93-95, and 98-99 stand rejected under 35 U.S.C. § 103 as being unpatentable over Lin in view of Griswold and further in view of Mankoff (U.S. Patent 6,385,591).

Claim 47 stands rejected under 35 U.S.C. § 103 as being unpatentable over Lin in view of Griswold and further in view of Lazarus (U.S. Patent 5,652,613).

Claim 100 stands rejected under 35 U.S.C. § 103 as being unpatentable over Lin in view of Griswold and further in view of official notice.

Appellant appeals the rejection of all of the above-identified claims.

## ARGUMENT
37 C.F.R. § 41.37(c)(1)(vii)

### A.      Rejection of All Claims Based on Lin in View of Griswold

Claims 23-41, 43-44, 53-58, 63-67, 69-70, 72-92, 96-97, and 101-103 stand rejected under 35 U.S.C. § 103 as being unpatentable over Lin (U.S. Patent No. 6,366,791) in view of Griswold (U.S. Patent No. 5,940,504). According to the office action, Lin discloses receiving a user-selected application and transmitting it to a mobile terminal, but does not disclose that the application is configured to become unavailable for use on the mobile terminal upon either expiration of a predetermined time period or use of the application a predetermined number of times. The office action states that Griswold teaches that the application is configured to become

unavailable for use on the mobile terminal under the recited conditions. According to the office action, it would have been obvious to combine Griswold with Lin to include a life time for an application for the purpose of managing the licensed product (Office Action at p. 8).

Appellant respectfully submits that no proper reason has been shown for combining Griswold, which relates to a license management system for computer software, with the mobile ring-tone downloading system of Lin. First of all, the cited portion of Lin (col. 3 lines 31-48) says nothing about managing licensed products. In fact, nowhere does Lin use the term "license" or any similar term. Instead, Lin describes downloading (for a fee) one or more ringtones to a mobile phone (see col. 3 lines 58-64). There would be no apparent reason to modify the fee-based ringtone downloading scheme of Lin to incorporate a software license management system like Griswold.

After the filing of Appellant's first appeal brief, prosecution was re-opened, and the new office action mailed on December 30, 2009 now also states on page 3 that one would have been motivated to incorporate the Griswold licensing system into Lin's ringtones because "it would prevent the financial lost [sic] and protecting the software such as the musical ring tone in Lin being misused [sic]." Appellant submits that this hindsight-based reasoning is not permitted under KSR and does not reflect a proper reason to combine the software licensing system of Griswold with the mobile ring-tone downloading system of Lin. Accordingly, Appellant submits that the proposed combination is improper and the claims are not properly rejected on this basis.

B.      **Independent Claims 23, 41, 53, 74, and 86**

Even if Lin and Griswold were combined as suggested, the combination would not disclose the features of these claims and the claims that depend from them. The office action

points to Griswold at column 7 lines 3-27 and 35-46 as disclosing the feature of selecting a lifetime for the chosen application. But that portion merely discloses a fixed termination date for the license, not a "selection" of the lifetime.

Independent claim 23 clearly recites a "<u>user-specified selection</u> of a variable lifetime" for the chosen application. Independent claim 41 similarly recites a "<u>user-selectable</u> variable lifetime" for the chosen application. Independent claim 53 recites "a time period <u>selectable by a user</u> of the mobile terminal." Independent claims 74 and 86 recite "expiration of a <u>user-selectable</u> time period" and "a <u>user-selectable number of times</u>" that the ringing tone can be used. Nowhere does Lin or Griswold disclose or suggest that <u>the user</u> can select the lifetime or number of uses that the application will remain operable. Consequently, the rejection of these claims on the basis of Lin and Griswold is respectfully traversed.

Page 3 of the office action states (last paragraph) that "Griswold discloses allowing the user or licensee to select the license term which can be the date/time period, or the number of concurrent uses which the licensee paid for use that product [sic]." It points to column 7, lines 15-27 as disclosing this feature. But nowhere does Griswold disclose such a feature. In Griswold, it is the <u>licensor – the one who grants the license</u> – not the licensee or end user who is able to select the license term. See, e.g., Griswold at col. 9 line 67 to col. 10 line 4: "Step 108.4 allows **the licensor** to fix licensing periods, or to determine free trial periods, for the use of the product. The licensing period may be extended by resetting license termination date 32 **at the licensor's site**." So, contrary to what is stated in the office action, nowhere does Griswold disclose or suggest that the user of a mobile device – as opposed to a licensor of the system – could select the lifetime for the chosen application.

**C.**     **Dependent Claims 27, 37, 56, 77, and 89**

As to dependent claims 27, 37, 56, 77, and 89, each of which recites an infrared connection, page 9 of the office action cites Lin at col. 1 lines 15-24. Appellant has carefully reviewed Lin but cannot find the word "infrared" or "IR" anywhere in Lin.

After Appellant filed the first appeal brief, prosecution was re-opened and the new office action now states on page 4 that such a limitation is either "well known" or is shown in U.S. Patent No. 6,615,248. But the rejection of these claims is based solely on the combination of Lin and Griswold – see office action at pages 9, 11, and 13. Therefore, Appellant maintains that the rejection of record cannot be sustained.

**D.**     **Dependent Claims 30, 63, 64, 66, 67, 80, 81, 83, 84, 96, and 97**

As to dependent claims 30, 63, 64, 66, 67, 80, 81, 83, 84, 96, and 97, each of which recites downloading the application (or ringtone) a subsequent time if at least a portion of the selected lifetime (or number of uses) remains, the office action cites Griswold at col. 9 lines 1-14 for this feature. Appellant has carefully studied the cited portion of Griswold but can find no such feature.

After Appellant filed the first appeal brief, prosecution was re-opened and the new office action mailed on December 30, 2009 now states on page 5 that "It's inherently [sic] that if the license term or the number of uses does not reach the expiration, the system still allow [sic] the user to download the product. Gris teaches this feature, otherwise the license term would have no use in Gris."

The statement in the office action is not correct – of course the license term is fully usable in Griwsold even if the user is not able to re-download the product a second time. The

user can use the product until the license term expires. There is simply no suggestion – nor is it inherent – that the user in Griswold can re-download the product a second time if the license term has not yet expired. Griswold merely discloses downloading the product <u>once</u> and then keeping it activated until the expiration of the license. Accordingly, the rejection of these claims is traversed.

**E.     Dependent Claims 31 and 32**

Regarding dependent claims 31 and 32, which recite that the request for a subsequent download comes from the user at a second mobile terminal, the office action cites Lin at col. 2 lines 32-41 for this feature. Appellant has carefully studied the cited portion but can find no such disclosure.

After Appellant filed the first appeal brief, prosecution was re-opened and the new office action states on page 5 that "Gris teaches the method of ensuring the licensed product is used on machines which it [sic] is licensed (see Gris col. 3, lines 31-37.) Base [sic] on this, the user can specifies [sic] a second machine that the user uses to access the licensed product."

Contrary to what is stated in the office action, nowhere is this claimed feature disclosed or inherent in Griswold.

**F.     Independent Claim 45 and Dependent Claims 42, 59, 60, 92, 93**

Claims 42, 45-49, 59-62, 68, 71, 93-95, and 98-99 stand rejected under 35 U.S.C. § 103 as being unpatentable over Lin in view of Griswold and further in view of Mankoff (U.S. Patent No. 6,385,591). According to the office action, Mankoff discloses the concept of expiring content becoming non-functional. The office action states that it would have been obvious to

combine Mankoff with Lin and Griswold "for the purpose of preventing the unauthorized use of the content."

Mankoff describes a system for organizing coupons, far afield from Lin or Griswold. The cited portion of Mankoff (col. 4 lines 35-37) merely explains that expired coupons can be deleted from the system. Appellant submits that no proper reason has been given for combining the ring-tone downloading system of Lin and the content-licensing scheme of Griswold with a coupon organizing system like Mankoff. Accordingly, the proposed combination is improper.

Even if Mankoff were properly combined with Lin or Griswold, the combination would not result in the cited claim limitations. For example, the fact that coupons are "automatically deleted" in Mankoff does not disclose the claimed limitation of an application "configured to delete itself" (dependent claim 42) or "configured to become unavailable by becoming non-functional" (dependent claims 59 and 92) or "configured to become unavailable by automatically deleting at least a portion of itself" (dependent claims 60 and 93). At any rate, the coupons in Mankoff are not "configured to become non-functional" – they are deleted from the system by another process. The coupons themselves are not "configured" to do anything. Therefore, the rejection of these claims is respectfully traversed.

## G.     Dependent Claim 47

As to dependent claim 47, which recites that the application disabler is "configured to delete an application with lifetime remaining in order to free storage space in the memory unit," after prosecution was re-opened following the filing of Appellant's first appeal brief, the new office action now bases the rejection of this claim on the combination of Lin, Griswold, and U.S. Patent No. 5652,613 to Lazarus (see page 17).

Appellant submits that Lazarus, entitled "Intelligent Electronic Program Guide Memory Management System and Method," is not analogous prior art to the claimed invention and cannot be combined as proposed. Accordingly, the rejection should be withdrawn.

**H.    Dependent Claim 61 and 94**

As to dependent claims 61 and 94, which recite that the "application is configured to delete only executable code," the office action again relies on Mankoff at col. 4 lines 34-36. First of all, the coupons in Mankoff are comprised entirely of data, not executable code. See FIG. 3 (contents of the virtual coupon) and col. 3 at lines 50-65. So, Mankoff does not delete only "executable code" by automatically deleting coupons. Second, the coupons themselves are not "configured" to do anything – they are passive. Instead, other components of Mankoff's system perform the automatic deletion. For these reasons, this rejection is improper.

**CONCLUSION**

For all of the foregoing reasons, Appellant respectfully submits that the final rejection is improper and should be reversed.

Respectfully submitted,

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## CLAIMS APPENDIX
37 C.F.R. § 41.37(c)(1)(viii)

Claims involved in the appeal:

23.     A method comprising:

connecting a first mobile terminal to an application database through a cellular communication network, the application database containing at least one application having a variable selectable lifetime;

receiving a user-specified choice of the at least one application for downloading to the first mobile terminal;

providing the application database with information identifying a user of the first mobile terminal;

receiving a user-specified selection of a variable lifetime for the chosen application, during which lifetime the chosen application is executable;

downloading the chosen application from said application database to the first mobile terminal; and

storing indicia of the selected lifetime for the chosen application and of the information identifying the user, wherein the stored indicia corresponds to the selected lifetime during which the chosen application is further executable at mobile terminals accessible by the user.

24.     The method of claim 23, wherein the step of downloading the chosen application is performed over a wireless connection.

25.     The method of claim 24, wherein the step of downloading over a wireless connection is performed through the cellular communication network.

26.     The method of claim 24, wherein the step of downloading over a wireless connection is achieved by way of a short-range connection.

27.     The method of claim 26, wherein the short-range connection is an infrared connection.

28.     The method of claim 23, wherein the indicia is stored in an application-license database in connection with the application database.

29.     The method of claim 23, wherein the information identifying the user is based on Subscriber Identity Module (SIM) information.

30.     The method of claim 23, further comprising the steps of:

receiving in the application database a request from the user for a subsequent downloading of a previously-downloaded application;

determining whether lifetime remains by reference to the stored indicia of the selected lifetime for a previously-downloaded application for the user; and

downloading the application a subsequent time, if it is determined that at least a portion of the selected lifetime remains for the requested application.

31.     The method of claim 30, wherein the request is received from a second mobile terminal.

32.     The method of claim 30, wherein the subsequent downloading comprises downloading the application to a second mobile terminal.

33.     The method of claim 30, further comprising the step of refusing the request for subsequent downloading if the determination indicates that lifetime has expired in the stored indicia for said user.

34.     The method of claim 30, wherein the step of downloading is performed over a wireless connection.

35.     The method of claim 34, wherein the step of downloading over a wireless connection is performed through the cellular communication network.

36.     The method of claim 34, wherein the downloading over a wireless connection is achieved by way of a short-range connection.

37.     The method of claim 36, wherein the short-range connection is an infrared connection.

38.    The method of claim 23, wherein the lifetime is a period of time measured from a predetermined starting time.

39.    The method of claim 38, wherein the predetermined starting time is the time of downloading the chosen application.

40.    The method of claim 23, wherein the lifetime is a predetermined number of downloads.

41.    Apparatus comprising:

a network infrastructure configured to communicate with at least one mobile terminal;

an application database containing at least one downloadable application, the application having a user-selectable variable lifetime during which the application is permitted to remain executable by an identified user;

a downloading server configured to communicate through the network infrastructure and configured to detect  a request containing information identifying a user to download a chosen application of the at least one application contained in the application database, the downloading server being further configured to obtain  the application from the application database, and to download the application to the at least one mobile terminal; and

an application-license database coupled to the downloading server, the application-license database configured to store the selected variable lifetime and the user-identifying information;

wherein the downloading server is configured to compare the download request to the selected lifetime and the user-identifying information stored in the application-license database for the chosen application, wherein the downloading server is further configured to download said application if the user has application lifetime remaining for the requested application.

42. The apparatus of claim 41 wherein said downloadable application is preprogrammed with the selected lifetime, wherein the downloadable application is configured to delete itself from the at least one mobile terminal when the selected lifetime expires.

43. The apparatus of claim 41, wherein the selected lifetime expires as a function of a selected number of transactions.

44. The apparatus of claim 41, wherein the lifetime expires as a function of a selected time.

45. Apparatus comprising:

a central processing unit (CPU);

a memory unit coupled with the CPU and configured to store at least one application;

an application requestor coupled with the CPU and configured to generate requests to download a variable-lifetime application from an application database;

a lifetime selector coupled with the CPU and configured to select a variable lifetime applicable to a downloaded application;

a lifetime determiner coupled with the CPU and configured to determine a remaining portion of the lifetime associated with a downloaded application; and

an application disabler coupled with the CPU and configured to disable an application;

wherein the apparatus is operable to receive and store downloaded applications and to permit the downloaded application to be executed at the mobile terminal as long as a portion of its associated lifetime remains.

46. The apparatus of claim 45, wherein the application disabler is configured to disable an application when the associated lifetime has expired.

47. The apparatus of claim 45, wherein the application disabler is configured to delete an application with lifetime remaining in order to free storage space in the memory unit.

48. The apparatus of claim 45, wherein the application requester is operable to request a previously-downloaded application for which at least a portion of the associated lifetime remains.

49. The apparatus of claim 45, wherein the memory unit also stores lifetime indicia associated with downloaded applications.

53.    A method comprising:

receiving a selected choice of a first application from a mobile terminal, the first application being one of a plurality of applications; and

receiving the first application via a wireless network, the first application being configured to become unavailable for use on the mobile terminal upon either

expiration of a time period selectable by a user of the mobile terminal, or

use of the first application a number of times selectable by a user of the mobile terminal.

54.    The method of claim 53, wherein the wireless network is a cellular communication network.

55.    The method of claim 53, wherein the wireless network comprises short-range wireless communication.

56.    The method of claim 55, wherein the short-range wireless communication comprises an infrared connection.

57.    The method of claim 53, further comprising receiving the user-selected time period for the first application from the mobile terminal.

58.    The method of claim 53, further comprising receiving the user-selected  number of times the first application may be used from the mobile terminal.

59.    The method of claim 53, wherein the first application is configured to become unavailable by becoming non-functional.

60.    The method of claim 53, wherein the first application is configured to become unavailable by automatically deleting at least a portion of itself.

61.    The method of claim 60, wherein the first application is configured to delete only executable code.

62.    The method of claim 60, wherein the first application is configured to retain customized settings in the mobile terminal.

63.    The method of claim 53, further comprising:

   subsequently receiving a re-selected choice of the first application; and

   again receiving the first application if time remains in the predetermined time period.

64.    The method of claim 53, further comprising:

   subsequently receiving a re-selected choice of the first application; and

again receiving the first application if the first application has been used less than the predetermined number of times.

65.    The method of claim 53, further comprising:

paying for the first application, wherein the amount of said payment is based on either the user-selectable time period or the user-selectable number of times.

66.    The method of claim 53, further comprising:

making an initial payment for the first application;

subsequently receiving another selection of the first application;

again receiving the first application if there is time remaining in the user-selected time period; and

making additional payment for said again receiving the first application, wherein the amount of said additional payment is reduced from the amount of the initial payment.

67.    The method of claim 53, further comprising:

making an initial payment for the first application;

subsequently receiving another selection of the first application;

again receiving the first application if the first application has been used less than the user-selected number of times; and

making additional payment for said again receiving the first application, wherein the amount of said additional payment is reduced from the amount of the initial payment.

68.     The method of claim 53, further comprising:

determining, at each attempt to use the first application, whether time remains in the user-selected time period, and

deleting the first application if time does not remain in the user-selected time period.

69.     The method of claim 53, further comprising:

determining, at each attempt to use the first application, whether the first application has been used less than the user-selected number of times, and

deleting the first application if the first application has been used the user-selected number of times.

70.     The method of claim 53, wherein said receiving a selected choice step comprises selecting a link at a website.

71.     The method of claim 53, further comprising deleting a pre-existing application to create memory space for the first application.

72.     The method of claim 53, wherein the first application is a game.

73.     The method of claim 53, wherein the first application contains executable digital information.

74.     A method comprising steps of:

receiving a choice of a first ringing tone at a mobile terminal, the first ringing tone being one of a plurality of ringing tones; and

receiving the first ringing tone via a wireless network, the first ringing tone being configured to become unavailable for use on the mobile terminal upon either

expiration of a user-selectable time period, or

use of the first ringing tone a user-selectable number of times.

75.     The method of claim 74, wherein the wireless network is a cellular network.

76.     The method of claim 74, wherein the wireless network comprises short-range wireless communication.

77.     The method of claim 76, wherein the short-range wireless communication comprises an infrared connection.

78.     The method of claim 74, further comprising receiving at the mobile terminal the user-selectable time period for the first ringing tone.

79.     The method of claim 74, further comprising receiving at the mobile terminal the user-selectable number of times the first ringing tone may be used.

80.     The method of claim 74, further comprising:

subsequently receiving a re-selection of the first ringing tone; and

again receiving the first ringing tone if there is time remaining in the user-selected time period.

81.     The method of claim 74, further comprising:

subsequently receiving a re-selection of the first ringing tone; and

again receiving the first ringing tone if the first ringing tone has been used less than the user-selected number of times.

82.     The method of claim 74, further comprising:

paying for the first ringing tone, wherein the amount of said payment is based on either the user-selected time period or the user-selected number of times.

83.     The method of claim 74, further comprising:

making an initial payment for the first ringing tone;

subsequently receiving a re-selection of the first ringing tone;

again receiving the first ringing if there is time remaining in the user-selected time period; and

making additional payment for said again receiving the first ringing tone, wherein the amount of said additional payment is reduced from the amount of the first payment.

84.     The method of claim 74, further comprising:

making an initial payment for the first ringing tone;

subsequently receiving a re-selection of the first ringing tone;

again receiving the first ringing tone if the first ringing tone has been used less than the user-selected number of times; and

making additional payment for said again receiving the first ringing tone, wherein the amount of said additional payment is reduced from the amount of the first payment.

85.     The method of claim 74, wherein said choosing step comprises selecting a link at a website.

86.     Apparatus comprising:

a memory; and

a central processing unit (CPU), wherein the apparatus is configured to perform

transmitting over a wireless communication network a choice of a first application, the first application being one of a plurality of applications,

receiving the first application via the wireless network, the first application being configured to become unavailable for use on the apparatus upon either

expiration of a user-selectable time period, or

use of the first application a user-selectable number of times, and

storing the first application in the memory.

87.     The apparatus of claim 86, wherein the wireless network is a cellular communication network.

88.     The apparatus of claim 86, wherein the wireless network comprises short-range wireless communication.

89.     The apparatus of claim 88, wherein the short-range wireless communication comprises an infrared connection.

90.     The apparatus of claim 86, wherein the mobile terminal is further configured to transmit a selection of the user-selectable time period for the first application.

91.     The apparatus of claim 86, wherein the mobile terminal is further configured to transmit a selection of the user-selectable number of times the first application may be used.

92.     The apparatus of claim 86, wherein the first application is configured to become unavailable by becoming non-functional.

93.     The apparatus of claim 86, wherein the first application is configured to become unavailable by automatically deleting at least a portion of itself.

94.     The apparatus of claim 93, wherein the first application is configured to delete only executable code.

95.     The apparatus of claim 93, wherein the first application is configured to retain customized settings in the apparatus.

96.     The apparatus of claim 86, wherein the apparatus is further configured to

        transmit a subsequent re-choice of the first application, and

        again receive the first application if time remains in the user-selected time period.

97.     The apparatus of claim 86, wherein the apparatus  is further configured to

        transmit a subsequent re-choice of the first application; and

        again receive the first application if the first application has been used less than the user-selected number of times.

98.     The apparatus of claim 86, wherein the apparatus is further configured to

        determine, at each attempt to use the first application, whether time remains in the user-selected time period, and

        delete the first application if time does not remain in the user-selected time period.

99.     The apparatus of claim 86, wherein the apparatus is further configured to

determine, at each attempt to use the first application, whether the first application has been used less than the user-selected number of times, and

delete the first application if the first application has been used the user-selected number of times.

100. The apparatus of claim 86, wherein said transmitting a choice comprises transmitting a selection of a link at a website.

101. The apparatus of claim 86, wherein the first application is a ringing tone.

102. The apparatus of claim 86, wherein the first application is a game.

103. The apparatus of claim 86, wherein the first application contains executable digital information.

## <u>EVIDENCE APPENDIX</u>
37 C.F.R. § 41.37(c)(1)(ix)

NONE.

## RELATED PROCEEDINGS APPENDIX
37 C.F.R. § 41.37(c)(1)(x)

NONE.